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October 27, 2017

VIA ECF AND REGULAR MAIL

Honorable Claire C. Cecchi
United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *In re Biogen '755 Patent Litigation*
Civil Action No. 10-2734 (CCC) (JBC)**

Dear Judge Cecchi,

I write on behalf of Bayer pursuant to your request during Tuesday's status conference to provide an update regarding the outstanding motions and pretrial deadlines as to Bayer. Bayer has met and conferred with counsel for Biogen, who agrees with the approach recommended below.

A. Pre-Trial Deadlines

The following pretrial deadlines should be vacated as to Bayer, to be rescheduled as part of a pre-trial schedule for Bayer which will be entered at a later date:

Event	Current Date
Exchange objections to exhibits	October 31, 2017
Exchange objections to deposition designations	
Exchange counter-designations	
Exchange proposed voir dire/jury instructions/verdict forms	November 14, 2017
Trial briefs	November 15, 2017
Exchange objections to counter-designations	November 21, 2017



Honorable Claire C. Cecchi, U.S.D.J.

October 27, 2017

Page 2

Event	Current Date
Complete meet-and-confers regarding voir dire/jury instructions/verdict forms	November 28, 2017
File voir dire / jury instructions/verdict forms File joint pretrial statement	December 1, 2017
Pre-Trial Conference	Friday, December 15, 2017, at 10:30 am
Trial begins	January 18, 2018 at 9:30 am

Bayer will not participate in (but may attend) the December 15 pre-trial conference for the trial between Biogen and Serono and Pfizer, and will not participate in the discussions regarding voir dire, jury instructions, and verdict forms to be used in the trial between Biogen and Serono and Pfizer.

B. Outstanding Motions

Bayer and Biogen agree that it would be most efficient for Bayer to participate in the briefing and oral argument according to the current schedule for already-filed motions *in limine* which pertain equally to Bayer and Serono. Involving Bayer in these motions now would avoid the Court having to consider briefing and argument on these same issues a second time, in advance of Bayer's trial. Given that the Court's rulings on the legal issues in these motions, some of which were filed by Bayer and joined by Serono, will affect Bayer, it should be able to continue briefing the matters and to participate in oral argument before the Court.

This approach would apply narrowly, and would be limited to motions that (a) the Court will consider in advance of Serono's trial and (b) apply equally to Bayer and Serono. Bayer need not participate in any motions specific to Serono, or motions which apply differently to Bayer and Serono. Likewise, the Court need not consider at this time any motions that do not apply to Serono (and apply only to Bayer).

Accordingly, Bayer and Biogen agree that Bayer will participate in the briefing and oral argument, according to the current dates, for the following already-filed motions *in limine*:

- Biogen motions *in limine* Nos. 2 (ECF No. 670), 3 (ECF No. 672), 4 (ECF No. 674), 5 (ECF No. 676), 6 (ECF No. 678), 7 (ECF No. 680), and 8 (ECF No. 682);
- Bayer motions *in limine* Nos. 4 (ECF No. 708), 5 (ECF No. 710), and 6 (ECF No. 712); and
- Serono motions *in limine* Nos. 1 (ECF No. 692), 4 (ECF No. 695), 5 (ECF No. 696), and 6 (ECF No. 697).

Of the remaining motions *in limine*, some pertain only to Bayer, and thus need not be decided in advance of Serono's trial. Accordingly, Bayer and Biogen agree that the following

Greenbaum Rowe
Smith & Davis LLP

Honorable Claire C. Cecchi, U.S.D.J.
October 27, 2017
Page 3

motions can be administratively terminated (and can be re-filed according to the motion *in limine* dates set in the eventual Bayer pre-trial schedule):

- Biogen motion *in limine* No. 11 (ECF No. 688); and
- Bayer motions *in limine* Nos. 1 (ECF No. 701), 2 (ECF No. 704), 3 (ECF No. 706), 7 (ECF No. 714), 8 (ECF No. 715), 9 (ECF No. 716), and 10 (ECF No. 718).

The rest of the pending motions *in limine* either apply only to Serono, or apply differently to Serono and Bayer such that the Court should defer consideration of the motion as to Bayer. These motions can be administratively terminated as to Bayer (those that apply to Bayer can be re-filed at a later date):

- Biogen motions *in limine* Nos. 1 (ECF No. 668), 9 (ECF No. 684), 10 (ECF No. 686), and 12 (ECF No. 690); and
- Serono motions *in limine* Nos. 2 (ECF No. 693) and 3 (ECF No. 694), and Serono's *Daubert* motion regarding Dr. Murphy (ECF No. 699).

Finally, with respect to Bayer's outstanding motions for summary judgment, Serono joined Bayer's motions for summary judgment Nos. 2 (ECF No. 506), 3 (ECF No. 509), and 4 (ECF No. 513). Serono did not join Bayer's motions for summary judgment Nos. 1 (ECF No. 503), 5 (ECF No. 517), and 6 (ECF No. 624).

Respectfully submitted,

GREENBAUM ROWE SMITH & DAVIS LLP

/s/ Robert M. Goodman

Robert M. Goodman

cc: Counsel of Record (via ECF)